

CHAPTER 6 THE FAA AND FLIGHT STANDARDS: HISTORY, ORGANIZATION AND THE PUBLIC LAW

1. EARLY REGULATORY AUTHORITY AND RESPONSIBILITIES

A. *Air Commerce Act of 1926*. Aviation regulatory authority in the United States began with the enactment of the Air Commerce Act of 1926. This legislation was passed in response to requests from the aviation industry, which believed commercial use of the airplane could not reach its full potential without Federal safety regulation. The Air Commerce Act commissioned the Secretary of Commerce to foster air commerce, issue and enforce air traffic rules, certificate pilots and aircraft, establish airways, and operate and maintain air navigation aids. During the next decade, the Department of Commerce continued to fulfill its civil aviation responsibilities as specified by the Air Commerce Act. A major responsibility was added in 1936 when the Department of Commerce assumed the task of controlling en route air traffic. This function soon became the Department's most demanding civil aviation responsibility.

B. *Civil Aeronautics Act of 1938*. The Civil Aeronautics Act of 1938 was passed to cope with growing economic forces and air traffic control needs. This act established a new, independent agency known as the Civil Aeronautics Authority, which was given additional power to issue air carrier route certificates and regulate airline fares. In 1940, President Franklin Roosevelt divided the Civil Aeronautics Authority into the Civil Aeronautics Board and the Civil Aeronautics Administration. The Civil Aeronautics Board was established as an independent agency. It was given authority and responsibility for economic and safety rule-making and accident investigation. The Civil Aeronautics Administration was reassigned to the Department of Commerce. It was given responsibility for air traffic control, airman and aircraft certification, safety enforcement, and airway development. In 1946, Congress added a federal-aid airport program to the responsibilities of the Civil Aeronautics Administration.

3. ESTABLISHMENT OF THE FAA

A. *Federal Aviation Act of 1958*. In the 13 years following World War II, air commerce, aviation technology, and the public demand for air services reached unforeseen levels of complexity. Under the Department of Commerce, the Civil Aeronautics Administration could not efficiently fulfill its responsibilities or solve many of the difficulties caused by this rapid growth and increasing complexity. To combat these problems, Congress passed the Federal Aviation Act of 1958 (FA Act). This law created an independent agency, the Federal Aviation Agency. It gave the agency the sole responsibility for developing and maintaining a common civil /military system of air navigation and air traffic control in addition to the former responsibilities of the Civil Aeronautics Administration and the safety rule-making functions of the Civil Aeronautics Board. The Civil Aeronautics Board retained the responsibility for economic regulation of air carriers and investigation of aircraft accidents. The FAA was given five basic responsibilities, summarized as follows:

(1) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense

(2) The promotion, encouragement, and development of civil aeronautics

(3) The control of the use of navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both

(4) The consolidation of research and development with respect to air navigation facilities, as well as the installation and operation thereof

(5) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft

B. *Department of Transportation (DOT)*. In 1967, the Federal Aviation Agency was placed in the newly created DOT and renamed the Federal Aviation Administration (FAA). This action was based on the beliefs of Congress, the execu-

tive branch, and the transportation industry that integrated and balanced transportation systems were necessary for the nation's transportation needs and that such systems could best be managed by a single department. Subsequently, the FAA acquired additional responsibilities through amendments to the FA Act. Examples of these added responsibilities are aviation security, aircraft noise abatement, and airport certification. The Airport and Airway Development Act authorized the FAA Administrator to establish minimum safety standards for airports and to issue operating certificates to air carrier airports meeting those standards.

5. ORGANIZATION OF THE FAA

A. Early Organization

(1) In 1927, the Department of Commerce employed 234 persons working in the Air Regulations Division and the Air Information Division. When the Civil Aeronautics Administration was created, it was administered by five appointed officials and had the authority to regulate civil aviation. Its associated agency, the Air Safety Board, was responsible for investigating accidents, determining probable cause of each accident, and making recommendations for accident prevention. From 1938 through 1958, the number of Civil Aeronautics Administration employees grew from 2,938 to 25,805.

(a) As of 1958, six domestic regions, one international region, the Aeronautical Center, and a Technical Development and Evaluation Center (FAA Technical Center) were directly responsible to the Civil Aeronautics Administration Administrator.

(b) Within Civil Aeronautics Administration Headquarters, a major operational office was directed by the Assistant Administrator for Operations. A subordinate office to the Assistant Administrator for Operations was called the Office of Aviation Safety. The Office of Aviation Safety was the predecessor of the Bureau of Flight Standards. Other subordinate offices to the Assistant Administrator for Operations were the Office of Federal Airways, the Office of Airports, and Washington National Airport.

(2) In 1959, the first year of the newly formed independent FAA, the FAA's Washington Headquarters organizational structure was as follows:

(a) Three staff level Assistant Administrators:

- Management Services
- Plans and Requirements
- Personnel and Training

(b) Five specialized offices:

- General Counsel
- Civil Air Surgeon
- Congressional Liaison
- Public Affairs
- International Coordination

(c) Five operational bureaus:

- Research and Development (included the FAA Technical Center)
- Flight Standards
- Facilities and Material
- Air Traffic Management
- National Capital Airports

(3) In 1959, the FAA's regional organizational structure included six domestic regions, one international region, and the Aeronautical Center.

B. *Current FAA Organizational Structure (1988).* The FAA currently employs approximately 45,000 personnel and its organization is, for the most part, decentralized. At Washington Headquarters, five specialized offices perform staff functions for the FAA Administrator. Seven Associate Ad-

ministrators are also based in Washington Headquarters. The Associate Administrators report directly to the Administrator and are responsible for the development of policy, regulations, methods, and certain other operational functions of the FAA. There are nine domestic regional offices and the Aeronautical Center, whose directors report directly to the Administrator. Regional directors are responsible for managing FAA programs at the field level.

7. HISTORY OF FLIGHT STANDARDS. When the FAA was created in 1958, the Bureau of Flight Standards was established as one of the five operating bureaus within the FAA. This bureau included most safety functions of the earlier Aeronautics Branch of the Department of Commerce and its successors, such as the Flight Operations Service and the Office of Flight Operations and Airworthiness.

A. In 1967, the name of the Bureau of Flight Standards was changed to Flight Standards Service. The director of this service reported directly to the FAA Administrator. The Flight Standards Service was later assigned as one of several offices within the Office of Associate Administrator for Aviation Standards, which had been established in January, 1979.

B. In July of 1979, three new offices, Flight Operations, Airworthiness, and Aviation Safety, absorbed the safety functions previously assigned to the Flight Standards Service. Most headquarters flight standards functions were performed by the Office of Flight Operations and the Maintenance Division of the Office of Airworthiness.

C. In November of 1984, the Office of Aviation Safety was reassigned as a staff office reporting directly to the Office of the Administrator.

D. In November of 1986, the Office of Flight Standards was created at FAA Headquarters by combining the Office of Flight Operations and the Maintenance Division from the Office of Airworthiness. With this change, Flight Standards safety responsibilities were aligned at the three organizational levels (Headquarters, regional, and district offices).

9. ORGANIZATION OF FLIGHT STANDARDS

A. *Headquarters Organizations.* The Office of Flight Standards (AFS) is one of six offices that report to the Associate Administrator for Aviation Standards. The Office of Flight Standards consists of three divisions, which report to the Director of Flight Standards. The three divisions are the Air Transportation Division (AFS-200), the Aircraft Maintenance Division (AFS-300), and the General Aviation and Commercial Division (AFS-800).

B. *Regional Organization.* Regional headquarters are organized into special staffs and operating divisions, similar to Washington Headquarters. One of the regional divisions is the Flight Standards Division (commonly referred to as the "200 Division"). Flight Standards District Offices (FSDOs), through office managers, report directly to Regional Flight Standards Division managers. Regional Flight Standards Divisions and FSDOs are responsible for accomplishing special regional programs as well as the national policies and programs developed by the Office of Flight Standards. (based in Washington Headquarters). However, Regional Flight Standards Division managers report directly to Regional Directors, who report to the FAA Administrator.

11. EVOLUTION OF SAFETY REGULATIONS. Section 8, Article 1 of the United States Constitution gives Congress the power to regulate and control interstate commerce. Interstate highway, railway, and water modes of transportation were regulated for many years before the advent of air transportation.

A. The Air Commerce Act of 1926 empowered the Secretary of Commerce to establish the necessary regulatory system to control and regulate air commerce. The regulatory system that was initially established evolved into an organized system of Civil Aviation Regulations (CAR). These regulations were supplemented by appropriately numbered Civil Aviation Manuals (CAM) which contained policies, procedures, and interpretations of each Civil Aviation Regulations section.

B. The Civil Aviation Regulations and Civil Aviation Manuals became outmoded with the rapid growth of air transportation and the introduction of turbojet transport category airplanes in the 1950's. Recodification of the Civil

Aviation Regulations began in 1961 and was completed in 1964 with the adoption of the Federal Aviation Regulations (FAR).

13. AVIATION PROMOTION AND REGULATION. Regulation and promotion of civil aviation are clearly identified by the FA Act as major responsibilities of the FAA. The FAA promotes safe and efficient civil aviation by such activities as the establishment and maintenance of Federal Airways (including NAVAID's), air traffic control services, and support of airport development and aviation educational programs. The principal objective of regulation, from the FAA's point of view, is to assure safety at all levels of aviation activity. In fostering safety through regulation, the FAA promotes the use of civil aviation and helps to ensure its future. Safety of flight is dependent upon regulation and enforcement of these regulations. Many other nations use United States Federal Aviation Regulations as regulatory models for their civil aviation programs.

15. THE NATIONAL TRANSPORTATION SAFETY BOARD

A. The National Transportation Safety Board (NTSB) was established by the Department of Transportation Act; it was made a part of the DOT on April 1, 1967. The NTSB was given the Civil Aeronautics Board functions, powers, and duties concerning aviation accident investigations, findings, and formulation of aviation safety improvement recommendations.

B. On April 1, 1975, the NTSB was made an independent agency. This independence allows the NTSB to properly fulfill its responsibilities to form conclusions and make recommendations that may be critical of the DOT and the FAA. At the request of the NTSB, certain aviation accidents are investigated by the FAA. However, FAA representatives are not permitted to participate in determining the "probable cause" of any aviation accident investigated by the NTSB. The facts, conditions, and circumstances of these accidents are reported to the NTSB, which then determines "probable cause".

17. THE CIVIL AERONAUTICS BOARD. The Airline Deregulation Act (ADA) was enacted on October 24, 1978. This Act expressed the intention of

Congress to diminish the functions of the Federal Government in regulating airline economics. To accomplish this, Congress directed that the Civil Aeronautics Board be abolished on December 31, 1984. On January 1, 1985, remaining Civil Aeronautics Board functions were transferred to the Office of the Secretary of Transportation (OST). Included in these remaining functions is the requirement that air carriers be found fit, willing, and able to perform as air carriers. These air carriers must hold economic certificates or an exemption under the FA Act in order to provide air transportation to the public.

21. FLIGHT STANDARDS AND THE FA ACT. The FAA's regulatory authority to prescribe, revise, and enforce standards is found in Title VI of the FA Act "Safety Regulation of Civil Aeronautics". Title VI is the foundation for the present structure of Flight Standards. Flight Standards is directly responsible for certain sections of Title VI. Other sections of Title VI are the responsibility of other offices within the FAA. However, Flight Standards has surveillance and enforcement responsibilities related to all sections of Title VI. The sections of Title VI are briefly described as follows:

A. *Section 601, General Safety Powers and Duties.* This section empowers the FAA to promote safety of flight for civil aircraft in air commerce. The Administrator has the duty to require minimum standards governing practices, methods, and procedures that provide for national security and safety in air commerce.

B. *Section 602, Airman Certificates.* The FAA has the authority to issue airman certificates which specify the capacity in which holders are authorized to serve as airmen.

C. *Section 603, Aircraft Certificates.* The FAA has the authority to issue type certificates for aircraft, aircraft engines, and propellers. The Administrator can also specify in regulations appliances for which the issuance of type certificates is reasonably required and issue those certificates.

D. *Section 604, Air Carrier Operating Certificates.* The FAA is empowered to issue air carrier operating certificates and establish minimum safety standards for the operation of the air carrier to whom the certificate is issued.

E. *Section 605, Maintenance of Equipment in Air Transportation.* In this section, each air carrier is given the duty to

make, or cause to be made, inspections, maintenance, overhaul, and repair of all equipment used in air transportation as required by the FA Act, orders, rules and regulations of the FAA.

F. *Section 606, Air Navigation Facility Rating.* The FAA is authorized to inspect, classify, and rate the suitability of any air navigation facility available for the use of civil aircraft. The Administrator is also authorized to issue a certificate for any such navigation facility.

G. *Section 607, Air Agency Rating.* The FAA is authorized to provide for examination and rating of air agencies such as civilian flight schools, repair stations, and other air agencies. The Administrator is also authorized to issue certificates for these schools, repair stations, and agencies.

H. *Section 608, Forms of Applications.* The FAA is authorized to prescribe the form and content of applications for certificates. The Administrator may also require that these applications be administered under oath.

I. *Section 609, Amendment, Suspension, and Revocation of Certificates.* The FAA may issue orders which amend, modify, suspend, or revoke, in whole or in part, any type of certificate issued. Any person whose certificate is affected by an order of the Administrator under this section may appeal the Secretary's order to NTSB.

J. *Section 610, Prohibitions.* This section prohibits any person or organization from conducting any air commerce operation without proper certification or hiring personnel who are not properly certificated. This section also prohibits persons or organizations from performing any aviation services contrary to regulations prescribed under Title VI.

K. *Section 611, Control and Abatement of Aircraft Noise and Sonic Boom.* The FAA, after consultation with the Secretary of Transportation and the Environmental Protection Agency, shall prescribe and amend standards and regulations for the measurement of aircraft noise and sonic boom.

L. *Section 612, Airport Operating Certificates.* The Administrator is authorized to issue or exempt airport operating certificates to airports serving air carriers certificated by the DOT and to establish safety standards for the operation of these airports.

21. THE PRIVATE SECTOR RESPONSIBILITIES. The term "private sector", when applied to aviation, includes all individuals and organizations participating in air commerce. Individuals and organizations such as pilots, mechanics, air carriers, air operators, air agencies, and manufacturers participate directly in air commerce, while other individuals and organizations such as vendors, food caterers, travel agents, baggage handlers, and aircraft sales participate indirectly.

A. The FAA, which represents part of the "public sector", has the duty as authorized by the FA Act under Title VI, "Safety Regulations of Civil Aeronautics", to establish minimum standards, rules, and national policy that provide for national security and safety in air commerce. This responsibility for aviation safety, however, does not rest entirely with the FAA.

B. Persons or organizations of the "private sector" also have an obligation to provide for public safety. All airmen, air carriers, aircraft owners and operators, air agencies, and certain airport operators who qualify for and accept an FAA certificate assume these "private sector" responsibilities. A major part of air commerce is conducted by private persons or organizations engaged in air transportation. These persons or organizations are referred to as air carriers and are involved in the common carriage by aircraft of persons, property, or mail for compensation or hire.

C. The FA Act requires a classification of safety standards appropriate to the differences between air transportation and other forms of air commerce. Therefore, safety standards applicable to air transportation (air carriers) are more stringent than standards applicable to persons or organizations not involved in common carriage.

23. AIR OPERATOR RESPONSIBILITIES FOR PUBLIC SAFETY

A. *Consideration of Safety and the Public Interest.* Section 601(b) of the FA Act specifies, in part, that when

prescribing standards and regulations and in issuing certificates, the FAA shall give full consideration "to the duty resting upon air operators to perform their services with the highest possible degree of safety in the public interest . . ." In other words, the FA Act charges the FAA with the responsibility of promulgating and enforcing adequate standards and regulations. At the same time, the FA Act recognizes that holders of air operator certificates have a direct responsibility for providing air transportation with the highest possible degree of safety. The meaning of Section 601(b) of the FA Act should be clearly understood. It means that this responsibility rests directly with the air operator, irrespective of any action taken or not taken by an individual FAA Inspector or the FAA.

B. Complying with the FA Act and the Federal Aviation Regulations. Before certification, the FAA's objective is to make a factual and legal determination that a prospective certificate holder is willing and able to fulfill its duties as set forth by the FA Act and comply with minimum standards and regulations prescribed by the FAA. This objective continues to exist after certification.

(1) If a certificate holder fails to perform its services with the highest degree of safety or fails to comply with the minimum standards and regulations, Section 609 of the FA Act specifies that the certificate may be amended, modified, suspended, or revoked in whole or in part.

(2) Additionally, Section 605(b) generally provides that whenever an inspector finds that any aircraft, aircraft engine, propeller, or appliance used or intended to be used by any air operator in air transportation is not in condition for safe operation, the inspector shall notify the operator and the product shall not be used in air transportation unless the FAA subsequently finds it to be in a condition for safe operations.

C. Non-Compliance. The following are conditions and/or situations which could indicate that an air operator is unable and/or unwilling to carry out its duties as set forth by the FA Act.

(1) Repetitive noncompliance with the minimum standards and regulations is indicative that the air operator

is incapable or unwilling to perform services with the highest possible degree of safety. Air operators must demonstrate the ability to consistently comply with the minimum standards and regulations without constant FAA surveillance. Circumstances that indicate a need for constant surveillance of all operations of an air operator should provide sufficient reasons and evidence to invoke the provisions of Section 609 of the FA Act to suspend or revoke the certificate or to amend the operating authority specified in operations specifications.

(2) Inadequate knowledge of minimum standards, regulations, or safe operating practices displayed by air operator management personnel may indicate a lack of concern for the duty of the air operator as recognized in the FA Act. A lack of knowledge and/or understanding of minimum standards and safe practices displayed by an air operator's employees is evidence that the air operator is not providing sufficient training and guidance required by current regulations and, consequently, not fulfilling its duties.

(3) Current regulations specify the certificate holder is responsible for the operational control and airworthiness of its aircraft. Control and discipline of an air operator's employees and agents are essential factors in fulfilling these responsibilities. The inability or lack of motivation to exercise such operational and/or quality airworthiness control clearly indicates that an air operator cannot or will not fulfill its duty.

(4) Accurate recordkeeping is a key factor in assuring positive operational and quality airworthiness control. Accurate recordkeeping is the only known method for an air operator to show continuing compliance with the minimum standards and regulations. Usually, compliance can only be substantiated by records and should never be presumed. Inaccurate and/or incomplete records should not be condoned. Knowing and willful falsification or alteration of records is a misdemeanor under Section 902(e) of the FA Act and should be promptly prosecuted in accordance with the appropriate provisions of the applicable statutes and regulations.

D. Higher Standards. The FA Act and current regulatory policies recognize the safety duties of air operators. Consequently, only minimum standards and regulations have been promulgated. These policies consider the concepts of private rights and public responsibilities. However, public safety and national security must be among the FAA's highest priorities.

FAA inspectors must therefore maintain an “action attitude” with respect to any air operator that does

not or cannot fulfill its duty to perform its services with the highest possible degree of safety.

